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CLERK US DISTRICT COURT	
DISTRICT OF ARIZONA	
BY <u>s/ D. Lucas</u> DEPUTY	

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

In the matter of

MATERIAL WITNESSES
SUPERSEDES GENERAL ORDER 98-44

GENERAL ORDER 05-34

IT IS ORDERED in reference to material witnesses:

1.) When an individual who is an undocumented alien is in custody and a determination has been made that such individual is to be a material witness in a criminal case, it is the responsibility of the arresting agency and of the United States Marshal to promptly notify the District Judge or Magistrate Judge of such detention as soon after the arrest as is practicable. This notification should specify the number of material witnesses arrested in situations where there has been more than one arrest. The District Judge or Magistrate Judge should be further advised of any material witness who is a juvenile. A federal investigative agent should promptly file an affidavit showing reasonable grounds to detain the witness.

2.) The District Judge or Magistrate Judge shall cause the detained material witness to promptly be brought before him and shall consider the witness for possible release pursuant to 18 U.S.C. § 3144. Counsel shall be appointed pursuant to the Criminal Justice Act for a detained witness who has not retained his own attorney and who is financially unable to retain his own attorney.

1 3.) The attorney for a defendant charged by complaint, indictment, or information shall
2 have three working days, after notification orally or in writing by the District Judge or
3 Magistrate Judge that a witness is being detained in the case, within which to interview a
4 detained material witness who is an adult. In the case of a detained material witness who is a
5 juvenile under the age of eighteen years, the attorney shall have 24 hours within which to
6 conduct the interview. The specified time limits may be extended by the District Judge or
7 Magistrate Judge for good cause. The attorney for the defendant shall promptly notify the
8 District Judge or Magistrate Judge after the interview of the juvenile whether he wishes to have
9 the person remain in custody as a material witness setting forth orally his reasons therefore.

10 4.) Following the three-day working period referred to in Paragraph 3 of these
11 procedures, all parties shall appear before the District Judge or Magistrate Judge. At such time
12 counsel shall advise the Court of such material witness they wish to be detained for video tape
13 deposition pursuant to 18 U.S.C. § 3144. Such deposition(s) shall be scheduled within the next
14 five working days. As to witnesses for which detention is not requested, they shall be released
15 to the U.S. Immigration and Customs Enforcement for further proceedings.

16 5.) The deposition shall be conducted in accordance with Rule 15, Federal Rules of
17 Criminal Procedure and under the general supervision of a Magistrate Judge. A Magistrate
18 Judge shall stand by and be available during the deposition to rule on matters that are
19 impractical to reserve for the trial judge. In the discretion of the Magistrate Judge, he or she
20 may, but need not, attend and preside over all or part of the deposition.

21 6.) Following the deposition(s), the District Judge or Magistrate Judge shall release the
22 material witness(es) from custody absent a showing that further detention is necessary to
23 prevent a failure of justice. Such a showing may be made by counsel for the defendant ex parte
24 by an affidavit submitted in camera, or an in camera hearing. Such affidavit and any hearing
25 conducted thereon shall be kept under seal unless otherwise ordered by a District Judge. In
26 considering whether to discharge a witness, the nature of the proposed testimony of the detained
27 person, the number of persons the United States Attorney and the defendant(s) seek to have
28 remain in custody, and the cumulative nature of the testimony expected to be given, shall be

1 considered by the District Judge or Magistrate Judge.

2 7.) The material witnesses so discharged shall be remanded to the custody of the District
3 Director of the United States Immigration and Customs Enforcement agency. No deportation
4 or voluntary return shall be effectuated by the District Director of the United States Immigration
5 and Customs Enforcement for any alien who has not been finally discharged as a material
6 witness without concurrence of the District Judge or Magistrate Judge.

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8 **DATED** this 8th day of November, 2005.

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10 s/ Stephen M. McNamee
11 Stephen M. McNamee
12 Chief United States District Judge
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